

# Sale of Land (Deposits) Bill

## CLAUSE NOTES

*Clause 1* is a clause in the usual form containing provisions relating to the short title and commencement of the Act.

*Clause 2* substitutes a new table in section 1 (3) of the *Sale of Land Act 1962* (herein called "the Act") to insert a new Division—"Division 3—Deposits"—in Part I. of the Act and under that heading inserts new sections 23, 24, 25, 26, 27 and 28.

*Proposed section 23* inserts interpretations of "Commission", "Deposit moneys", "Estate Agent" and "Solicitor".

*Proposed section 24* provides that—

- (1) where a solicitor or estate agent receives deposit moneys in respect of the sale of land those moneys are to be held by the party receiving them as a stakeholder until, in the case of a cash transaction, the purchaser becomes entitled to a transfer or conveyance of the land, and in the case of a terms contract, the purchaser becomes entitled to possession or to the receipt of rents and profits.
- (2) a solicitor receiving deposit moneys shall deal with them pursuant to the relevant provisions of the *Legal Profession Practice Act 1958*.

*Proposed section 25* provides that—

- (1) where deposit moneys are received by the vendor personally, he must pay those moneys into a bank account in Victoria in the joint names of himself and the purchaser within seven days of receipt thereof.
- (2) withdrawals from accounts set up under this section require the signature of both vendor and purchaser.
- (3) banks are exonerated from any responsibility to ensure that the provisions of this section are complied with in respect of any moneys deposited with them pursuant to this section.
- (4) a vendor or purchaser failing to comply with the provisions of this section is guilty of an offence and is liable to a penalty of not more than \$1000.

*Proposed section 26* provides that despite the provisions of sections 24 and 25 in the event of rescission of a contract for the sale of land the vendor or the purchaser shall immediately become entitled to the deposit moneys according to whose default caused the rescission.

*Proposed section 27* provides that—

- (1) the purchaser may in writing permit the stakeholder to release deposit moneys to the vendor.

- (2) permission to pay over deposit moneys prior to settlement shall have no force unless and until the vendor has supplied the purchaser in writing with details of charges and encumbrances over the land to be sold and the purchaser is satisfied with the information given.
- (3) upon a purchaser being satisfied with the particulars provided by the vendor he shall give a written statement to that effect to the vendor.
- (4) a vendor supplying incorrect information to the purchaser shall be guilty of an offence and entitles the purchaser in such circumstances to rescind the contract and recover deposit moneys.
- (5) where an estate agent is authorized to pay deposit moneys to the vendor's solicitor he may keep an amount equal to the amount of his commission plus any auction expenses to which he is or will be entitled to in respect of the transaction and the moneys retained by him shall be held by him as a stakeholder.
- (6) for the purposes of this section "mortgage" has a wider meaning than for the remainder of the Act.
- (7) this section shall not override section 7 of the *Strata Titles Act 1967*.

*Proposed section 28* provides that a provision in an agreement or contract purporting to obviate the provisions of this Bill shall be null and void and permits the purchaser when such a provision has been inserted to avoid the contract if he so wishes.

*Clause 3* provides that the provisions of this Bill shall not apply to transactions entered into prior to the commencement of this Act.